240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

**SUPPLEMENTARY INFORMATION:** On December 9, 1994, the FAA published a final rule that revised the description of Jet Route J–37 in the State of Louisiana. In the airspace designation of Jet Route J–37 the Hobby 084° radial was in error. This correction changes the ''Hobby O84°'' radial to read the ''Hobby 090°'' radial.

### Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for Jet Route J–37 published in the **Federal Register** on December 9, 1994 (59 FR 63718; **Federal Register** Document 94–30225, Column 3) is corrected as follows:

**J–37 [Corrected]**

From Hobby, TX, via INT of the Hobby 090° and Harvey, LA, 266° radials; Harvey; Semmes, AL; Montgomery, AL; Spartanburg, SC; Lynchburg, VA; Gordonsville, VA; Brooke, VA; INT Brooke 067° and Coyle, NJ, 226° radials; to Coyle. From Kennedy, NY; Kingston, NY; Albany, NY; Massena, NY, to the INT of the Massena 037° radial and the United States/Canadian Border.

Issued in Washington, DC, on December 30, 1994.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 95–577 Filed 1–9–95; 8:45 am]

**BILLING CODE 4910–13–P**

## 14 CFR Parts 121, 129, and 135

**[Docket No. 27663; Amdt. No. 121–246]**

**RIN 2120–AF24**

## Traffic Alert and Collision Avoidance System, TCAS I

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to a final rule, Traffic Alert and collision avoidance System, TCAS I, published in the Federal Register on December 29, 1994.

**DATES:** This document is effective December 29, 1994. The final compliance date is December 31, 1995. Comments on the revision of § 121.356(b) must be received on or before February 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Gary E. Davis, telephone (202) 267–8096.

### Correction to Final Rule

In the final rule beginning on page 67584, in the issue of Thursday, December 29, 1994, the following correciton is being made:

1. On page 67584, first column, and in the heading, the amendment number should read ''121–246'', instead of ''121–247''.

Dated: January 4, 1995.

**Donald P. Byrne,**

*Assistant Chief Counsel, Office of Chief Counsel.*

[FR Doc. 95–571 Filed 1–9–95; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1 and 602

**[TD 8586]**

**RIN 1545–AC35**

## Treatment of Gain From Disposition of Certain Natural Resource Recapture Property

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document provides final regulations relating to the tax treatment of gain from the disposition of certain natural resource recapture property (section 1254 property after enactment of the Tax Reform Act of 1986 and oil, gas, or geothermal property before enactment of the Tax Reform Act of 1986). Changes to the applicable tax law were made by the Tax Reform Act of 1986, the Tax Reform Act of 1984, the Energy Tax Act of 1978, the Tax Reform Act of 1976, the Tax Reform Act of 1969, and the Act of September 12, 1966. The regulations provide the public with guidance in complying with the changed tax laws.

**DATES:** These regulations are effective January 10, 1995.

For dates of applicability, see § 1.1254–6.

**FOR FURTHER INFORMATION CONTACT:** Brenda M. Stewart (202–622–3120, not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1352. The estimated annual burden per respondent varies from four to six hours, depending on individual circumstances, with an estimated average of five hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

### Background

On June 11, 1980, the IRS published proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 170, 301, 312, 341, 453, 751, 1254, and 1502 of the Internal Revenue Code of 1954 in the **Federal Register** (45 FR 39512). These amendments were proposed to conform the regulations to section 205 (a), (b), and (c) (1) and (2) of the Tax Reform Act of 1976, Pub. L. 94–455, 90 Stat. 1533, and section 402(c) of the Energy Tax Act of 1978, Pub. L. 95–618, 92 Stat. 3202, and to make certain other technical amendments to conform the regulations to section 1(c) of the Act of September 12, 1966, Pub. L. 89–570, 80 Stat. 762, to section 211(b)(6) of the Tax Reform Act of 1969, Pub. L. 91–172, 83 Stat. 570, and to sections 1042(c)(2), 1101(d)(2), 1901(a)(93), and 2110(a) of the Tax Reform Act of 1976, 90 Stat. 1637, 1658, 1780, 1905). A public hearing was held on September 9, 1980. After considering all comments regarding the proposed regulations, the proposed regulations (except for the provisions relating to an electing small business corporation (hereinafter referred to as an S corporation)), are adopted as revised by this Treasury decision. The rules under § 1.751–1(c)(6)(ii) are clarified, but no substantive change is intended except to insert additional recapture sections under the Internal Revenue Code of 1986 (Code).

Because of the substantial changes made to the tax treatment of S corporations by section 5(a)(37) of the Subchapter S Revision Act of 1982, Pub. L. 97–354, 96 Stat. 1696, section 492 of the Tax Reform Act of 1984, Pub. L. 98–369, 98 Stat. 853, and sections 411 and 413 of the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2225, 2227, § 1.1254–3 of the proposed regulations (relating to an electing small business),

has not been adopted. Instead, a notice of proposed rulemaking, designated as § 1.1254–4, relating to the recapture of natural resource recapture property by an S corporation and its shareholders will be proposed to conform the regulations to these laws.

**I. Intangible Drilling and Development Costs Recapture in a Partnership**

The proposed regulations require a partnership to compute the amount of intangible drilling and development costs to be recaptured (entity approach) and, subject to the substantial economic effect test, to allocate that amount among the partners in accordance with their respective distributive shares as provided in the partnership agreement. Some commentators argue that the proposed regulations are inconsistent with partner level (aggregate approach) computation of depletion and gain upon the sale of partnership oil and gas property under section 613A(c)(7)(D).

Under the entity approach of the proposed regulations, some recapture of section 1254 costs may be shifted from the partners who claimed the deductions to other partners who did not receive the benefit of the deductions. Under the aggregate approach, depending on the allocation of gain or amount realized upon sale, some section 1254 costs may not be recaptured though total partnership gain exceeds total partnership section 1254 costs.

The commentators suggest that, consistent with section 613A(c)(7)(D), the final regulations should adopt the aggregate approach. They argue that under the aggregate approach, a partner can more readily compute both the extent of the deductions that were previously allocated to the partner and the appropriate adjustment required by section 1254(a)(4) (as in effect before enactment of the Tax Reform Act of 1986). The commentators contend that it is difficult for a partnership to obtain this information from the individual partners. In addition, they cite section 58(i) (as in effect before enactment of the Tax Reform Act of 1986), which allowed general partners to elect to amortize intangible drilling and development costs over a 5 year period and limited partners to elect to amortize intangible drilling and development costs over a 10 year period. Section 59(e) now provides an analogous amortization election.

Consistent with the commentators' suggestion, the final regulations adopt the aggregate approach. Recapture is determined at the partner level. However, the regulations contain an anti-abuse rule providing that recapture is determined at the partnership level if the Commissioner determines that the amount realized or gain recognized from the disposition of section 1254 property is allocated to partners with a principal purpose of avoiding recapture under section 1254.

**II. Recapture of Distributions on the Liquidation of a Partnership**

In general, the section 1254 recapture provisions override nonrecognition provisions in the Code. However, section 1254 (b)(1) states that rules similar to the rules of section 1245 (b) and (c) shall be prescribed by regulation. Accordingly, the final regulations limit the amount subject to recapture in certain tax-free transactions to gain that would be recognized without regard to section 1254. Section 1.1254–2(c)(3) lists the transfers in which recapture is limited. All transfers listed involve transferred basis.

Commentators point out that under the proposed regulations recapture is required upon the liquidation of a partnership interest because section 732(b) provides that the basis of property received in a liquidation is a substitute basis equal to the basis of the partner's interest in the partnership. However, under section 1245(b)(6)(A), recapture upon the distribution of partnership assets in liquidation is limited. Accordingly, the commentators suggest that a similar rule should be adopted for section 1254 purposes.

The final regulations adopt the commentators' suggestion. The basis of natural resource recapture property distributed by a partnership to a partner is deemed to be determined by reference to the adjusted basis of the property to the partnership.

**III. Recapture Reduction**

Under section 1254(a)(4) (as in effect before enactment of the Tax Reform Act of 1986), the amount of intangible drilling and development costs subject to recapture is reduced by the amount, if any, by which the ''deduction for depletion'' under section 611 ''would have been increased'' if intangible drilling and development costs had been charged to a capital account rather than currently expensed under section 263(c). The proposed regulations, therefore, require taxpayers to use the excess of the hypothetical cost or percentage depletion deduction over the amount allowed under section 611 (either cost or percentage depletion) in determining the constructive increase in depletion.

By contrast, many commentators argued that, notwithstanding the language of the statute, according to the legislative history, the recapture amount should be reduced even in situations where expensing intangible drilling and development costs did not result in decreased depletion deductions.

The final regulations reject this view and instead continue to follow the statute, which, as noted above, provides that recapturable intangible drilling and development costs are reduced by the amount by which the ''deduction for depletion'' claimed under section 611 ''would have been increased.'' Thus, the amount of recapturable intangible drilling and development costs is reduced by only the excess, if any, of the hypothetical cost or percentage depletion deduction (computed as if intangible drilling and development costs subject to depletion had been capitalized) over the amount of the cost or percentage depletion deduction the taxpayer actually claimed. Consequently, unless the hypothetical cost or percentage depletion amount is greater than the actual depletion deduction claimed, no depletion deduction is foregone, and all intangible drilling and development costs attributable to the property are recapturable.

The final regulations are clarified to remove uncertainties regarding the method for calculating the reduction in the amount of recapturable intangible drilling and development costs.

**IV. Nonproductive Wells**

Some commentators state that intangible drilling and development costs allocable to nonproductive wells should not be subject to recapture. They point out that, even if a taxpayer elects to capitalize intangible drilling and development costs, intangible drilling and development costs of nonproductive wells are not added to basis because the operator normally deducts these amounts under § 1.612–4(b)(4) on the return for the first taxable year after abandonment of a nonproductive well.

One reason for the enactment of section 1254 was to prevent the conversion of intangible drilling and development costs currently deducted against ordinary income into capital gain in certain limited risk situations. See H.R. Rep. 94–658, 94th Cong., 1st Sess. 94 (1975). For example, if a well proves to be nonproductive causing a nonrecourse debt to become worthless, the taxpayer generally recognizes income that is treated as capital gain upon foreclosure of the debt, because a foreclosure is deemed to be a sale of the property. Consequently, ordinary income deductions would be converted

into capital gains to the extent of the leveraged amounts.

Aside from foreclosure of a nonrecourse debt, however, a nonproductive well provides no opportunity for converting an ordinary income stream into capital gain. Accordingly, the final regulations provide that section 1254 costs attributable to nonproductive wells are not recapturable, except in certain limited risk situations.

**V. Depreciation**

Some commentators argue that depreciable costs associated with drilling should not be separated from depletable costs in calculating the hypothetical depletion deduction. Commentators also point out that it is difficult to identify the amount of intangible drilling and development costs that could have been deducted as depreciation, because it is not current industry practice to separate depreciable costs from depletable costs. In response to these comments, the final regulations do not require depreciable costs to be separated from depletable costs in calculating the hypothetical depletion deduction.

**VI. Property Interest Subject to Recapture**

Under the proposed regulations, each operating mineral interest in an ''oil, gas, or geothermal property,'' as well as any nonoperating mineral interest retained by a lessor or sublessor of a property to which intangible drilling and development costs were properly chargeable when held by such person prior to the creation of the lease or sublease, is subject to recapture.

In *Houston Oil and Minerals Corp. v. Commissioner,* 92 T.C. 1331 (1989), *aff'd,* 922 F.2d 283 (5th Cir. 1991), *Louisiana Land and Exploration Co. v. Commissioner,* 92 T.C. 1340 (1989), and *Southland Royalty Co. v. United States,* 91–1 U.S.T.C. ¶ 50,083 (Cls. Ct. 1991), the Internal Revenue Service took the position that section 1254 requires recapture of intangible drilling and development costs upon the disposition of a nonoperating mineral interest carved out of an operating mineral interest. The courts, however, held instead that the disposition of an overriding royalty interest carved out of an operating mineral interest to which intangible drilling and development costs were charged does not trigger recapture because the overriding royalty interest is not ''oil, gas, or geothermal property'' within the meaning of section 1254(a)(3).

The Tax Court in *Houston Oil and Minerals Corp.,* 92 T.C. at 1339, and *Louisiana Land and Exploration Co.,* 92 T.C. at 1348, and the Claims Court in *Southland Royalty Co.,* 91–1 U.S.T.C. at 87,337, noted that because the Tax Reform Act of 1986 amended section 1254 to include within the definition of ''oil, gas, or geothermal property'' property the basis of which has been adjusted for depletion, nonoperating mineral interests come within the ambit of section 1254 after 1986. Consequently, the courts reasoned, the issue considered in these cases would arise only with respect to property placed in service before 1987.

The regulations have been amended to treat a nonoperating mineral interest carved out of an operating mineral interest with respect to which section 1254 costs have been deducted as property to which section 1254 costs are properly chargeable. Thus, the final regulations make clear that natural resource recapture property includes a nonoperating mineral interest if the nonoperating mineral interest was carved out of an operating mineral interest to which section 1254 costs were properly chargeable by the holder of the operating mineral interest. See § 1.1254–1(b)(2). Consistent with the opinions in the litigated cases, however, this provision will be effective only with respect to property placed in service after December 31, 1986.

**VII. Disposition**

Commentators urge that the regulations state who is liable for recapture if an operating mineral interest shifts automatically or at the option of the person who will receive the interest, as, for example, a farm-out. In response to these comments, the final regulations provide that liability for potential recapture of intangible drilling and development costs attributable to the entire operating mineral interest held by the carrying party prior to reversion or conversion remains attributable to the reduced operating mineral interest retained by the carrying party after a portion of the operating mineral interest has reverted to the carried party or after the conversion of an overriding royalty interest that converts, at the option of the grantor or successor in interest, to an operating mineral interest after a certain amount of production.

**VIII. Like Kind Exchanges and Involuntary Conversions**

Commentators state that under § 1.1254–4(d) of the proposed regulations liability for recapture of intangible drilling and development costs remains with the property with respect to which the costs were incurred and does not transfer to the property received in a like kind exchange or involuntary conversion. However, under the final regulations recapture liability transfers to the property received by the transferor who received the benefit of the deductions for section 1254 costs. This result is consistent with the section 1245(b)(4) and § 1.1245–2(c)(4) rules for recapture of depreciation. Because section 1254(b)(1) states that the regulations should prescribe rules similar to rules in section 1245 (b) and (c) for like kind exchanges, involuntary conversions, and other nontaxable transfers, the final regulations more closely mirror the section 1245 recapture rules for such transactions.

**IX. Filing Requirements**

The proposed regulations provide allocation rules for the recapture of section 1254 costs on the sale of a portion of, or an undivided interest in, natural resource recapture property. Under the proposed regulations, a taxpayer is required to attach to the tax return documents sufficient to establish allocation of intangible drilling and development costs to the disposed of portion or undivided interest, notwithstanding that the intangible drilling and development costs do not in fact relate to that portion or undivided interest. Commentators suggest that it is more practical simply to require a taxpayer to state on the tax return that the section 1254 costs do not relate to the property disposed of and to retain verifying documentation. In response to the commentators' suggestion, the final regulations contain a book and records retention requirement.

*Effective dates:* These regulations are effective January 10, 1995 and §§ 1.1254–1 through 1.1254–3 and § 1.1254–5 apply to any disposition of natural resource recapture property occurring after March 13, 1995. The rule in § 1.1254–1(b)(2)(iv)(A)(*2*), concerning a nonoperating mineral interest carved out of an operating mineral interest with respect to which an expenditure has been deducted, applies to any disposition occurring after March 13, 1995 of property (within the meaning of section 614) that is placed in service by the taxpayer after December 31, 1986. For dispositions of natural resource recapture property occurring on or before March 13, 1995, taxpayers must take reasonable return positions taking into consideration the statute and its legislative history.

**Special Analyses**

It has been determined that this Treasury decision is not a significant

regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration on its impact on small business.

**Drafting Information**

The principal author of these final regulations is Brenda M. Stewart, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.1254–1 also issued under 26 U.S.C. 1254(b).

Section 1.1254–2 also issued under 26 U.S.C. 1254(b).

Section 1.1254–3 also issued under 26 U.S.C. 1254(b).

Section 1.1254–4 also issued under 26 U.S.C. 1254(b).

Section 1.1254–5 also issued under 26 U.S.C. 1254(b).

Section 1.1254–6 also issued under 26 U.S.C. 1254(b). * * *

**§ 1.301–1 [Amended]**

**Par. 2.** Section 1.301–1 is amended as follows:

1. Paragraph (d)(1)(iii) is amended by removing the language ''or 1252(a)'' and adding ''1252(a), or 1254(a)'' in its place.

2. Paragraph (h)(2)(ii)(*b*) is amended by removing the language ''or section 1252(a) (relating to gain from disposition of farm land)'' and adding ''section 1252(a) (relating to gain from disposition of farm land), or section 1254(a) (relating to gain from disposition of interest in natural resource recapture property)'' in its place.

3. Paragraph (j)(1) is amended by removing the language ''or 1252(a)'' and adding ''1252(a), or 1254(a)'' in its place.

**§ 1.312–3 [Amended]**

**Par. 3.** Section 1.312–3 is amended by removing ''or 1252(a)'' and adding ''1252(a), or 1254(a)'' in its place.

**§ 1.341–6 [Amended]**

**Par. 4.** Section 1.341–6 is amended as follows:

1. In paragraph (b)(1), the last sentence is amended by removing the language ''and 1252 (relating to gain from disposition of farm land)'' and adding ''1252 (relating to gain from disposition of farm land), and 1254 (relating to gain from disposition of interest in natural resource recapture property)'' in its place.

2. In paragraph (b)(2)(i), the first sentence is amended by removing ''or 1252)'' and adding ''1252, or 1254)'' in its place.

3. In paragraph (b)(2)(iii), the second sentence is amended by removing ''or 1252)'' and adding ''1252, or 1254)'' in its place.

4. In paragraph (b)(3), the first sentence is amended by removing ''or 1252)'' and adding ''1252, or 1254)'' in its place.

5. In paragraph (h)(4), the first sentence is amended by removing ''or 1252)'' and adding ''1252, or 1254)'' in its place.

6. Paragraph (n) is amended by:

a. Removing the language *''and 1252''* from the paragraph heading and adding *''1252, and 1254''* in its place.

b. Removing from the text the language ''and 1252(a) (relating to gain from disposition of farm land)'' and adding ''1252(a) (relating to gain from disposition of farm land), and 1254(a) (relating to gain from disposition of interest in natural resource recapture property)'' in its place.

**§ 1.453–9 [Amended]**

**Par. 5.** Section 1.453–9, paragraph (c)(1)(ii) is amended by:

1. Removing from the second sentence the language ''or 1252(a)(1)'' and adding ''1252(a)(1), or 1254(a)(1)'' in its place.

2. Removing from the third sentence the language ''and paragraph (d)(3) of § 1.1252–1'' and adding in its place ''paragraph (d)(3) of § 1.1252–1, and paragraph (d) of § 1.1254–1''.

**Par. 6.** Section 1.751–1, paragraphs (c)(4), (c)(5), and (c)(6) are revised to read as follows:

**§ 1.751–1 Unrealized receivables and inventory items.**

* * * * *

(c) * * *

(4)(i) With respect to any taxable year of a partnership ending after September 12, 1966 (but only in respect of expenditures paid or incurred after that date), the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from mining property defined in section 617(f)(2). With respect to each item of partnership mining property so defined, the potential gain is the amount that would be treated as gain to which section 617(d)(1) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the item were sold by the partnership at its fair market value.

(ii) With respect to sales, exchanges, or other dispositions after December 31, 1975, in any taxable year of a partnership ending after that date, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from stock in a DISC as described in section 992(a). With respect to stock in such a DISC, the potential gain is the amount that would be treated as gain to which section 995(c) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the stock were sold by the partnership at its fair market value.

(iii) With respect to any taxable year of a partnership beginning after December 31, 1962, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from section 1245 property. With respect to each item of partnership section 1245 property (as defined in section 1245(a)(3)), potential gain from section 1245 property is the amount that would be treated as gain to which section 1245(a)(1) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the item of section 1245 property were sold by the partnership at its fair market value. See § 1.1245–1(e)(1). For example, if a partnership would recognize under section 1245(a)(1) gain of $600 upon a sale of one item of section 1245 property and gain of $300 upon a sale of its only other item of such property, the potential section 1245 income of the partnership would be $900.

(iv) With respect to transfers after October 9, 1975, and to sales, exchanges, and distributions taking place after that date, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from stock in certain foreign corporations as described in section 1248. With respect to stock in such a foreign corporation, the potential gain is the amount that would be treated as gain to which section 1248(a) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the stock were sold by the partnership at its fair market value.

(v) With respect to any taxable year of a partnership ending after December 31, 1963, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from section 1250 property. With respect to each item of partnership section 1250 property (as defined in section 1250(c)), potential gain from section 1250 property is the amount that would be treated as gain to which section 1250(a) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the item of section 1250 property were sold by the partnership at its fair market value. See § 1.1250–1(f)(1).

(vi) With respect to any taxable year of a partnership beginning after December 31, 1969, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from farm recapture property as defined in section 1251(e)(1) (as in effect before enactment of the Tax Reform Act of 1984). With respect to each item of partnership farm recapture property so defined, the potential gain is the amount which would be treated as gain to which section 1251(c) (as in effect before enactment of the Tax Reform Act of 1984) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the item were sold by the partnership at its fair market value.

(vii) With respect to any taxable year of a partnership beginning after December 31, 1969, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from farm land as defined in section 1252(a)(2). With respect to each item of partnership farm land so defined, the potential gain is the amount that would be treated as gain to which section 1252(a)(1) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the item were sold by the partnership at its fair market value.

(viii) With respect to transactions which occur after December 31, 1976, in any taxable year of a partnership ending after that date, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from franchises, trademarks, or trade names referred to in section 1253(a). With respect to each such item so referred to in section 1253(a), the potential gain is the amount that would be treated as gain to which section 1253(a) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the items were sold by the partnership at its fair market value.

(ix) With respect to any taxable year of a partnership ending after December 31, 1975, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain under section 1254(a) from natural resource recapture property as defined in § 1.1254–1(b)(2). With respect to each separate partnership natural resource recapture property so described, the potential gain is the amount that would be treated as gain to which section 1254(a) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the property were sold by the partnership at its fair market value.

(x) For purposes of section 751(c) and this paragraph (c)(4), any arm's-length agreement between the buyer and seller, or between the partnership and distributee partner, will generally establish the fair market value of the property described in this paragraph (c)(4).

(5) For purposes of subtitle A of the Internal Revenue Code, the basis of any potential gain described in paragraph (c)(4) of this section is zero.

(6)(i) If (at the time of any transaction referred to in paragraph (c)(4) of this section) a partnership holds property described in paragraph (c)(4) of this section and if—

(A) A partner had a special basis adjustment under section 743(b) in respect of the property;

(B) The basis under section 732 of the property if distributed to the partner would reflect a special basis adjustment under section 732(d); or

(C) On the date a partner acquired a partnership interest by way of a sale or exchange (or upon the death of another partner) the partnership owned the property and an election under section 754 was in effect with respect to the partnership, the partner's share of any potential gain described in paragraph (c)(4) of this section is determined under paragraph (c)(6)(ii) of this section.

(ii) The partner's share of the potential gain described in paragraph (c)(4) of this section in respect of the property to which this paragraph (c)(6)(ii) applies is that amount of gain that the partner would recognize under section 617(d)(1), 995(c), 1245(a), 1248(a), 1250(a), 1251(c) (as in effect before the Tax Reform Act of 1984), 1252(a), 1253(a), or 1254(a) (as the case may be) upon a sale of the property by the partnership, except that, for purposes of this paragraph (c)(6) the partner's share of such gain is determined in a manner that is consistent with the manner in which the partner's share of partnership property is determined; and the amount of a potential special basis adjustment under section 732(d) is treated as if it were the amount of a special basis adjustment under section 743(b). For example, in determining, for purposes of this paragraph (c)(6), the amount of gain that a partner would recognize under section 1245 upon a sale of partnership property, the items allocated under § 1.1245–1(e)(3)(ii) are allocated to the partner in the same manner as the partner's share of partnership property is determined. See § 1.1250–1(f) for rules similar to those contained in § 1.1245–1(e)(3)(ii).

* * * * *

**Par. 7.** Sections 1.1254–0 through 1.1254–6 are added to read as follows:

**§ 1.1254–0 Table of contents for section 1254 recapture rules.**

This section lists the major captions contained in §§ 1.1254–1 through 1.1254–6.

**§ 1.1254–1 Treatment of gain from disposition of natural resource recapture property.**

(a) *In general.* Upon any disposition of section 1254 property or any disposition after December 31, 1975 of oil, gas, or geothermal property, gain is treated as ordinary income in an amount equal to the lesser of the amount of the section 1254 costs (as defined in paragraph (b)(1) of this section) with respect to the property, or the amount, if any, by which the amount realized on the sale, exchange, or involuntary conversion, or the fair market value of the property on any other disposition, exceeds the adjusted basis of the property. However, any amount treated as ordinary income under the preceding sentence is not included in the taxpayer's *gross income from the property* for purposes of section 613. Generally, the lesser of the amounts described in this paragraph (a) is treated as ordinary income even though, in the absence of section 1254(a), no gain would be recognized upon the disposition under any other provision of the Internal Revenue Code. For the definition of the term *section 1254 costs*, see paragraph (b)(1) of this section. For the definition of the terms *section 1254 property*, *oil, gas, or geothermal property*, and *natural resource recapture property*, see paragraph (b)(2) of this section. For rules relating to the *disposition* of natural resource recapture property, see paragraphs (b)(3), (c), and (d) of this section. For exceptions and limitations to the application of section 1254(a), see § 1.1254–2.

(b) *Definitions*—(1) *Section 1254 costs*—(i) *Property placed in service after December 31, 1986.* With respect to any property placed in service by the taxpayer after December 31, 1986, the term *section 1254 costs* means—

(A) The aggregate amount of expenditures that have been deducted by the taxpayer or any person under section 263, 616, or 617 with respect to such property and that, but for the deduction, would have been included in the adjusted basis of the property or in the adjusted basis of certain depreciable property associated with the property; and

(B) The deductions for depletion under section 611 that reduced the adjusted basis of the property.

(ii) *Property placed in service before January 1, 1987.* With respect to any property placed in service by the taxpayer before January 1, 1987, the term *section 1254 costs* means—

(A) The aggregate amount of costs paid or incurred after December 31, 1975, with respect to such property, that have been deducted as intangible drilling and development costs under section 263(c) by the taxpayer or any other person (except that section 1254 costs do not include costs incurred with respect to geothermal wells commenced before October 1, 1978) and that, but for the deduction, would be reflected in the adjusted basis of the property or in the adjusted basis of certain depreciable property associated with the property; reduced by

(B) The amount (if any) by which the deduction for depletion allowed under section 611 that was computed either under section 612 or sections 613 and 613A, with respect to the property, would have been increased if the costs (paid or incurred after December 31, 1975) had been charged to capital account rather than deducted.

(iii) *Deductions under section 59 and section 291.* Amounts capitalized pursuant to an election under section 59(e) or pursuant to section 291(b) are treated as section 1254 costs in the year in which an amortization deduction is claimed under section 59(e)(1) or section 291(b)(2).

(iv) *Suspended deductions.* If a deduction of a section 1254 cost has been suspended as of the date of disposition of section 1254 property, the deduction is not treated as a section 1254 cost if it is included in basis for determining gain or loss on the disposition. On the other hand, if the deduction will eventually be claimed, it is a section 1254 cost as of the date of disposition. For example, a deduction suspended pursuant to the 65 percent of taxable income limitation of section 613A(d)(1) may either be included in basis upon disposition of the property or may be deducted in a year after the year of disposition. See § 1.613A–4(a)(1). If it is included in the basis then it is not a section 1254 cost, but if it is deductible in a later year it is a section 1254 cost as of the date of the disposition.

(v) *Previously recaptured amounts.* If an amount has been previously treated as ordinary income pursuant to section 1254, it is not a section 1254 cost.

(vi) *Nonproductive wells.* The aggregate amount of section 1254 costs paid or incurred on any property includes the amount of intangible drilling and development costs incurred on nonproductive wells, but only to the extent that the taxpayer recognizes income on the foreclosure of a nonrecourse debt the proceeds from which were used to finance the section 1254 costs with respect to the property. For this purpose, the term nonproductive well means a well that does not produce oil or gas in commercial quantities, including a well that is drilled for the purpose of ascertaining the existence, location, or extent of an oil or gas reservoir (e.g., a delineation well). The term *nonproductive well* does not include an injection well (other than an injection well drilled as part of a project that does not result in production in commercial quantities).

(vii) *Calculation of amount described in paragraph (b)(1)(ii)(B) of this section (hypothetical depletion offset)*—(A) *In general.* In calculating the amount

described in paragraph (b)(1)(ii)(B) of this section, the taxpayer shall apply the following rules. The taxpayer may use the 65-percent-of-taxable-income limitation of section 613A(d)(1). If the taxpayer uses that limitation, the taxpayer is not required to recalculate the effect of such limitation with respect to any property not disposed of. That is, the taxpayer may assume that the hypothetical capitalization of intangible drilling and development costs with respect to any property disposed of does not affect the allowable depletion with respect to property retained by the taxpayer. Any intangible drilling and development costs that, if they had not been treated as expenses under section 263(c), would have properly been capitalized under § 1.612–4(b)(2) (relating to items recoverable through depreciation under section 167 or cost recovery under section 168) are treated as costs described in § 1.612–4(b)(1) (relating to items recoverable through depletion). The increase in depletion attributable to the capitalization of intangible drilling and development costs is computed by subtracting the amount of cost or percentage depletion actually claimed from the amount of cost or percentage depletion that would have been allowable if intangible drilling and development costs had been capitalized. If the remainder is zero or less than zero, the entire amount of intangible drilling and development costs attributable to the property is recapturable.

(B) *Example.* The following example illustrates the principles of paragraph (b)(1)(vii)(A).

*Example. Hypothetical depletion offset.* In 1976, A purchased undeveloped property for $10,000. During 1977, A incurred $200,000 of productive well intangible drilling and development costs with respect to the property. A deducted the intangible drilling and development costs as expenses under section 263(c). Estimated reserves of 150,000 barrels of recoverable oil were discovered in 1977 and production began in 1978. In 1978, A produced and sold 30,000 barrels of oil at $8 per barrel, resulting in $240,000 of gross income. A had no other oil or gas production in 1978. A claimed a percentage depletion deduction of $52,800 (i.e., 22% of $240,000 gross income from the property). If A had capitalized the intangible drilling and development costs, assume that $200,000 of the costs would have been allocated to the depletable property and none to depreciable property. A's cost depletion deduction if the intangible drilling and development costs had been capitalized would have been $42,000 (i.e., (($200,000 intangible drilling and development costs + $10,000 acquisition costs) x 30,000 barrels of production)/ 150,000 barrels of estimated recoverable reserves). Since this amount is less than A's depletion deduction of $52,800 (percentage depletion), no reduction is made to the amount of intangible drilling and development costs ($200,000). On January 1, 1979, A sold the oil property to B for $360,000 and calculated section 1254 recapture without reference to the 65-percent-of-taxable-income limitation. A's gain on the sale is the entire $360,000, because A's basis in the property at the beginning of 1979 is zero (i.e., $10,000 cost less $52,800 depletion deduction for 1978). Since the section 1254 costs ($200,000) are less than A's gain on the sale, $200,000 is treated as ordinary income under section 1254(a). The remaining amount of A's gain ($160,000) is not subject to section 1254(a).

(2) *Natural resource recapture property*—(i) *In general.* The term *natural resource recapture property* means section 1254 property or oil, gas, or geothermal property as those terms are defined in this section.

(ii) *Section 1254 property.* The term *section 1254 property* means any property (within the meaning of section 614) that is placed in service by the taxpayer after December 31, 1986, if any expenditures described in paragraph (b)(1)(i)(A) of this section (relating to costs under section 263, 616, or 617) are properly chargeable to such property, or if the adjusted basis of such property includes adjustments for deductions for depletion under section 611.

(iii) *Oil, gas, or geothermal property.* The term *oil, gas, or geothermal property* means any property (within the meaning of section 614) that was placed in service by the taxpayer before January 1, 1987, if any expenditures described in paragraph (b)(1)(ii)(A) of this section are properly chargeable to such property.

(iv) *Property to which section 1254 costs are properly chargeable.*—(A) An expenditure is properly chargeable to property if—

(*1*) The property is an operating mineral interest with respect to which the expenditure has been deducted;

(*2*) The property is a nonoperating mineral interest (e.g., a net profits interest or an overriding royalty interest) burdening an operating mineral interest if the nonoperating mineral interest is carved out of an operating mineral interest described in paragraph (b)(2)(iv)(A)(*1*) of this section;

(*3*) The property is a nonoperating mineral interest retained by a lessor or sublessor if such lessor or sublessor held, prior to the lease or sublease, an operating mineral interest described in paragraph (b)(2)(iv)(A)(*1*) of this section; or

(*4*) The property is an operating or a nonoperating mineral interest held by a taxpayer if a party related to the taxpayer (within the meaning of section 267(b) or section 707(b)) held an operating mineral interest (described in paragraph (b)(2)(iv)(A)(*1*) of this section) in the same tract or parcel of land that terminated (in whole or in part) without being disposed of (e.g., a working interest which terminated after a specified period of time or a given amount of production), but only if there exists between the related parties an arrangement or plan to avoid recapture under section 1254. In such a case, the taxpayer's section 1254 costs with respect to the property include those of the related party.

(B) *Example.* The following example illustrates the provisions of paragraph (2)(iv)(A)(*4*) of this section:

*Example. Arrangement or plan to avoid recapture.* C, an individual, owns 100% of the stock of both X Co. and Y Co. On January 1, 1998, X Co. enters into a standard oil and gas lease. X Co. immediately assigns to Y Co. 1% of the working interest for one year, and 99% of the working interest thereafter. In 1998, X Co. and Y Co. expend $300 in intangible drilling and development costs developing the tract, of which $297 are deducted by X Co. under section 263(c). On January 1, 1999, Y Co. sells its 99% share of the working interest to an unrelated person. Based on all the facts and circumstances, the arrangement between X Co. and Y Co. is part of a plan or arrangement to avoid recapture under section 1254. Therefore, Y Co. must include in its section 1254 costs the $297 of intangible drilling and development costs deducted by X Co.

(v) *Property the basis of which includes adjustments for depletion deductions.* The adjusted basis of property includes adjustments for depletion under section 611 if—

(A) The basis of the property has been reduced by reason of depletion deductions; or

(B) The property has been carved out of or is a portion of property the basis of which has been reduced by reason of depletion deductions.

(vi) *Property held by a transferee.* Property held by a transferee is natural resource recapture property if the property was natural resource recapture property in the hands of the transferor and the transferee's basis in the property is determined with reference to the transferor's basis in the property (e.g., a gift) or is determined under section 732.

(vii) *Property held by a transferor.* Property held by a transferor of natural resource recapture property is natural resource recapture property if the transferor's basis in the property received is determined with reference to the transferor's basis in the property transferred by the transferor (e.g., a like kind exchange). For purposes of this paragraph (b)(2), property described in this paragraph (b)(2)(vii) is treated as placed in service at the time the

property transferred by the transferor was placed in service by the transferor.

(3) *Disposition*—(i) *General rule.* The term *disposition* has the same meaning as in section 1245, relating to gain from dispositions of certain depreciable property.

(ii) *Exceptions.* The term *disposition* does not include—

(A) Any transaction that is merely a financing device, such as a mortgage or a production payment that is treated as a loan under section 636 and the regulations thereunder;

(B) Any abandonment (except that an abandonment is a disposition to the extent the taxpayer recognizes income on the foreclosure of a nonrecourse debt);

(C) Any creation of a lease or sublease of natural resource recapture property;

(D) Any termination or election of the status of an S corporation;

(E) Any unitization or pooling arrangement;

(F) Any expiration or reversion of an operating mineral interest that expires or reverts by its own terms, in whole or in part; or

(G) Any conversion of an overriding royalty interest that, at the option of the grantor or successor in interest, converts to an operating mineral interest after a certain amount of production.

(iii) *Special rule for carrying arrangements.* In a carrying arrangement, liability for section 1254 costs attributable to the entire operating mineral interest held by the carrying party prior to reversion or conversion remains attributable to the reduced operating mineral interest retained by the carrying party after a portion of the operating mineral interest has reverted to the carried party or after the conversion of an overriding royalty interest that, at the option of the grantor or successor in interest, converts to an operating mineral interest after a certain amount of production.

(c) *Disposition of a portion of natural resource recapture property*—(1) *Disposition of a portion (other than an undivided interest) of natural resource recapture property*—(i) *Natural resource recapture property subject to the general rules of § 1.1254–1.* For purposes of section 1254(a)(1) and paragraph (a) of this section, except as provided in paragraphs (c)(1) (ii) and (3) of this section, in the case of the disposition of a portion (that is not an undivided interest) of natural resource recapture property, the entire amount of the section 1254 costs with respect to the natural resource recapture property is treated as allocable to that portion of the property to the extent of the amount of gain to which section 1254(a)(1) applies. If the amount of the gain to which section 1254(a)(1) applies is less than the amount of the section 1254 costs with respect to the natural resource recapture property, the balance of the section 1254 costs remaining after allocation to the portion of the property that was disposed of remains subject to recapture by the taxpayer under section 1254(a)(1) upon disposition of the remaining portion of the property. For example, assume that A owns an 80-acre tract of land with respect to which A has deducted intangible drilling and development costs under section 263(c). If A sells the north 40 acres, the entire amount of the section 1254 costs with respect to the 80-acre tract is treated as allocable to the 40-acre portion sold (to the extent of the amount of gain to which section 1254(a)(1) applies).

(ii) *Natural resource recapture property subject to the exceptions and limitations of § 1.1254–2.* For purposes of section 1254(a)(1) and paragraph (a) of this section, except as provided in paragraph (b)(3) of this section, in the case of the disposition of a portion (that is not an undivided interest) of natural resource recapture property to which section 1254(a)(1) does not apply by reason of the application of § 1.1254–2 (certain nonrecognition transactions), the following rule for allocation of costs applies. An amount of the section 1254 costs that bears the same ratio to the entire amount of such costs with respect to the entire natural resource recapture property as the value of the property transferred bears to the value of the entire natural resource recapture property is treated as allocable to the portion of the natural resource recapture property transferred. The balance of the section 1254 costs remaining after allocation to that portion of the transferred property remains subject to recapture by the taxpayer under section 1254(a)(1) upon disposition of the remaining portion of the property. For example, assume that A owns an 80-acre tract of land with respect to which A has deducted intangible drilling and development costs under section 263(c). If A gives away the north 40 acres, and if 60 percent of the value of the 80-acre tract were attributable to the north 40 acres given away, 60 percent of the section 1254 costs with respect to the 80-acre tract is allocable to the north 40 acres given away.

(2) *Disposition of an undivided interest*—(i) *Natural resource recapture property subject to the general rules of § 1.1254–1.* For purposes of section 1254(a)(1), except as provided in paragraphs (b)(2)(ii) and (b)(3) of this section, in the case of the disposition of an undivided interest in natural resource recapture property (or a portion thereof), a proportionate part of the section 1254 costs with respect to the natural resource recapture property is treated as allocable to the transferred undivided interest to the extent of the amount of gain to which section 1254(a)(1) applies. For example, assume that A owns an 80-acre tract of land with respect to which A has deducted intangible drilling and development costs under section 263(c). If A sells an undivided 40 percent interest in the 80-acre tract, 40 percent of the section 1254 costs with respect to the 80-acre tract is allocable to the transferred 40 percent interest in the 80-acre tract. However, if the amount of gain recognized on the sale of the 40 percent undivided interest were equal to only 35 percent of the amount of section 1254 costs attributable to the 80-acre tract, only 35 percent of the section 1254 costs would be treated as attributable to the undivided 40 percent interest. See paragraph (c)(3) of this section for an alternative allocation rule.

(ii) *Natural resource recapture property subject to the exceptions and limitations of § 1.1254–2.* For purposes of section 1254(a)(1) and paragraph (a) of this section, except as provided in paragraph (b)(3) of this section, in the case of a disposition of an undivided interest in natural resource recapture property (or a portion thereof) to which section 1254 (a)(1) does not apply by reason of § 1.1254–2, a proportionate part of the section 1254 costs with respect to the natural resource recapture property is treated as allocable to the transferred undivided interest. See paragraph (c)(3) of this section for an alternative allocation rule.

(3) *Alternative allocation rule*—(i) *In general.* The rules for the allocation of costs set forth in section 1254(a)(2) and paragraphs (c)(1) and (2) of this section do not apply with respect to section 1254 costs that the taxpayer establishes to the satisfaction of the Commissioner do not relate to the transferred property. Except as provided in paragraphs (c)(3)(ii) and (iii) of this section, a taxpayer may satisfy this requirement only by receiving a private letter ruling from the Internal Revenue Service that the section 1254 costs do not relate to the transferred property.

(ii) *Portion of property.* Upon the transfer of a portion of a natural resource recapture property (other than an undivided interest) with respect to which section 1254 costs have been incurred, a taxpayer may treat section 1254 costs as not relating to the transferred portion if the transferred portion does not include any part of any

deposit with respect to which the costs were incurred.

(iii) *Undivided interest.* Upon the transfer of an undivided interest in a natural resource recapture property with respect to which section 1254 costs have been incurred, a taxpayer may treat costs as not relating to the transferred interest if the undivided interest is an undivided interest in a portion of the natural resource recapture property, and the portion would be eligible for the alternative allocation rule under paragraph (c)(3)(ii) of this section.

(iv) *Substantiation.* If a taxpayer treats section 1254 costs incurred with respect to a natural resource recapture property as not relating to a transferred interest in a portion of the property, the taxpayer must indicate on his or her tax return that the costs do not relate to the transferred portion and maintain the records and supporting evidence that substantiate this position.

(d) *Installment method.* Gain from a disposition to which section 1254(a)(1) applies is reported on the installment method if that method otherwise applies under section 453 or 453A of the Internal Revenue Code and the regulations thereunder. The portion of each installment payment as reported that represents income (other than interest) is treated as gain to which section 1254(a)(1) applies until all of the gain (to which section 1254(a)(1) applies) has been reported, and the remaining portion (if any) of the income is then treated as gain to which section 1254(a)(1) does not apply. For treatment of amounts as interest on certain deferred payments, see sections 483, 1274, and the regulations thereunder.

**§ 1.1254–2 Exceptions and limitations.**

(a) *Exception for gifts and section 1041 transfers*—(1) *General rule.* No gain is recognized under section 1254(a)(1) upon a disposition of natural resource recapture property by a gift or by a transfer in which no gain or loss is recognized pursuant to section 1041 (relating to transfers between spouses). For purposes of this paragraph (a), the term *gift* means, except to the extent that paragraph (a)(2) of this section applies, a transfer of natural resource recapture property that, in the hands of the transferee, has a basis determined under the provisions of sections 1015(a) or (d) (relating to basis of property acquired by gift). For rules concerning the potential reduction in the amount of the charitable contribution in the case of natural resource recapture property, see section 170(e) and § 1.170A–4. See § 1.1254–3(b)(1) for determination of potential recapture of section 1254 costs on property acquired by gift. See § 1.1254–1(c)(1)(ii) and (c)(2)(ii) for apportionment of section 1254 costs on a gift of a portion of natural resource recapture property.

(2) *Part gift transactions.* If a disposition of natural resource recapture property is in part a sale or exchange and in part a gift, the gain that is treated as ordinary income pursuant to section 1254(a)(1) is the lower of the section 1254 costs with respect to the property or the excess of the amount realized upon the disposition of the property over the adjusted basis of the property. In the case of a transfer subject to section 1011(b) (relating to bargain sales to charitable organizations), the adjusted basis for purposes of the preceding sentence is the adjusted basis for determining gain or loss under section 1011(b).

(b) *Exception for transfers at death.* Except as provided in section 691 (relating to income in respect of a decedent), no gain is recognized under section 1254(a)(1) upon a transfer at death. For purposes of this paragraph, the term *transfer at death* means a transfer of natural resource recapture property that, in the hands of the transferee, has a basis determined under the provisions of section 1014(a) (relating to basis of property acquired from a decedent) because of the death of the transferor. See § 1.1254–3(a)(4) and (c) for the determination of potential recapture of section 1254 costs on property acquired in a transfer at death.

(c) *Limitation for certain tax-free transactions*—(1) *General rule.* Upon a transfer of property described in paragraph (c)(3) of this section, the amount of gain treated as ordinary income by the transferor under section 1254(a)(1) may not exceed the amount of gain recognized to the transferor on the transfer (determined without regard to section 1254). In the case of a transfer of both natural resource recapture property and property that is not natural resource recapture property in one transaction, the amount realized from the disposition of the natural resource recapture property is deemed to be equal to the amount that bears the same ratio to the total amount realized as the fair market value of the natural resource recapture property bears to the aggregate fair market value of all the property transferred. The preceding sentence is applied solely for purposes of computing the portion of the total gain (determined without regard to section 1254) that may be recognized as ordinary income under section 1254(a)(1).

(2) *Special rule for dispositions to certain tax-exempt organizations.* Paragraph (c)(1) of this section does not apply to a disposition of natural resource recapture property to an organization (other than a cooperative described in section 521) that is exempt from the tax imposed by chapter I of the Internal Revenue Code. The preceding sentence does not apply to a disposition of natural resource recapture property to an organization described in section 511 (a)(2) or (b)(2) (relating to imposition of tax on unrelated business income of charitable, etc., organizations) if, immediately after the disposition, the organization uses the property in an unrelated trade or business as defined in section 513. If any property with respect to which gain is not recognized by reason of the exception of this paragraph (c)(2) ceases to be used in an unrelated trade or business of the organization acquiring the property, that organization is, for purposes of section 1254, treated as having disposed of the property on the date of the cessation.

(3) *Transfers described.* The transfers referred to in paragraph (c)(1) of this section are transfers of natural resource recapture property in which the basis of the natural resource recapture property in the hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of any of the following provisions:

(i) Section 332 (relating to certain liquidations of subsidiaries). See paragraph (c)(4) of this section.

(ii) Section 351 (relating to transfer to a corporation controlled by transferor).

(iii) Section 361 (relating to exchanges pursuant to certain corporate reorganizations).

(iv) Section 721 (relating to transfers to a partnership in exchange for a partnership interest).

(v) Section 731 (relating to distributions by a partnership to a partner). For purposes of this paragraph, the basis of natural resource recapture property distributed by a partnership to a partner is deemed to be determined by reference to the adjusted basis of such property to the partnership.

(4) *Special rules for section 332 transfers.* In the case of a distribution in complete liquidation of a subsidiary to which section 332 applies, the limitation provided in this paragraph (c) is confined to instances in which the basis of the natural resource recapture property in the hands of the transferee is determined, under section 334(b)(1), by reference to its basis in the hands of the transferor. Thus, for example, the limitation may apply in respect of a liquidating distribution of natural resource recapture property by a subsidiary corporation to the parent corporation, but does not apply in

respect of a liquidating distribution of natural resource recapture property to a minority shareholder. This paragraph (c) does not apply to a liquidating distribution of natural resource recapture property by a subsidiary to its parent if the parent's basis for the property is determined under section 334(b)(2) (as in effect before enactment of the Tax Reform Act of 1986), by reference to its basis for the stock of the subsidiary. This paragraph (c) does not apply to a liquidating distribution under section 332 of natural resource recapture property by a subsidiary to its parent if gain is recognized and there is a corresponding increase in the parent's basis in the property (e.g., certain distributions to a tax-exempt or foreign corporation).

(d) *Limitation for like kind exchanges and involuntary conversions*—(1) *General rule.* If natural resource recapture property is disposed of and gain (determined without regard to section 1254) is not recognized in whole or in part under section 1031 (relating to like kind exchanges) or section 1033 (relating to involuntary conversions), the amount of gain taken into account by the transferor under section 1254(a)(1) may not exceed the sum of—

(i) The amount of gain recognized on the disposition (determined without regard to section 1254); plus

(ii) The fair market value of property acquired that is not natural resource recapture property and is not taken into account under paragraph (d)(1)(i) of this section (that is, qualifying property under section 1031 or 1033 that is not natural resource recapture property).

(2) *Disposition and acquisition of both natural resource recapture property and other property.* For purposes of this paragraph (d), if both natural resource recapture property and property that is not natural resource recapture property are acquired as the result of one disposition in which both natural resource recapture property and property that is not natural resource recapture property are disposed of—

(i) The total amount realized upon the disposition is allocated between the natural resource recapture property and the property that is not natural resource recapture property disposed of in proportion to their respective fair market values;

(ii) The amount realized upon the disposition of the natural resource recapture property is deemed to consist of so much of the fair market value of the natural resource recapture property acquired as is not in excess of the amount realized from the natural resource recapture property disposed of, and the remaining portion (if any) of the amount realized upon the disposition of such property is deemed to consist of so much of the fair market value of the property that is not natural resource recapture property acquired as is not in excess of the remaining portion; and

(iii) The amount realized upon the disposition of the property that is not natural resource recapture property is deemed to consist of so much of the fair market value of all the property acquired which was not taken into account under paragraph (d)(2)(ii) of this section. Except as provided in section 1060 and the regulations thereunder, if a buyer and seller have adverse interests as to such allocation of the amount realized, any arm's-length agreement between the buyer and seller is used to establish the allocation. In the absence of such an agreement, the allocation is made by taking into account the appropriate facts and circumstances.

**§ 1.1254–3 Section 1254 costs immediately after certain acquisitions.**

(a) *Transactions in which basis is determined by reference to cost or fair market value of property transferred*—(1) *Basis determined under section 1012.* If, on the date a person acquires natural resource recapture property, the person's basis for the property is determined solely by reference to its cost (within the meaning of section 1012), the amount of section 1254 costs with respect to the natural resource recapture property in the person's hands is zero on the acquisition date.

(2) *Basis determined under section 301(d), 334(a), or 358(a)(2).* If, on the date a person acquires natural resource recapture property, the person's basis for the property is determined solely by reason of the application of section 301(d) (relating to basis of property received in a corporate distribution), section 334(a) (relating to basis of property received in a liquidation in which gain or loss is recognized), or section 358(a)(2) (relating to basis of other property received in certain exchanges), the amount of the section 1254 costs with respect to the natural resource recapture property in the person's hands is zero on the acquisition date.

(3) *Basis determined solely under former section 334(b)(2) or former section 334(c).* If, on the date a person acquires natural resource recapture property, the person's basis for the property is determined solely under the provisions of section 334(b)(2) (prior to amendment of that section by the Tax Equity and Fiscal Responsibility Act of 1982) or (c) (prior to repeal of that section by the Tax Reform Act of 1986) (relating to basis of property received in certain corporate liquidations), the amount of section 1254 costs with respect to the natural resource recapture property in the person's hands is zero on the acquisition date.

(4) *Basis determined by reason of the application of section 1014(a).* If, on the date a person acquires natural resource recapture property from a decedent, the person's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the property on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date), the amount of section 1254 costs with respect to the natural resource recapture property in the person's hands is zero on the acquisition date. See paragraph (c) of this section for the treatment of certain transfers at death.

(b) *Gifts and certain tax-free transactions*—(1) *General rule.* If natural resource recapture property is transferred in a transaction described in paragraph (b)(2) of this section, the amount of section 1254 costs with respect to the natural resource recapture property in the hands of the transferee immediately after the disposition is an amount equal to—

(i) The amount of section 1254 costs with respect to the natural resource recapture property in the hands of the transferor immediately before disposition; minus

(ii) The amount of any gain taken into account as ordinary income under section 1254(a)(1) by the transferor upon the disposition.

(2) *Transactions covered.* The transactions to which paragraph (b)(1) of this section apply are—

(i) A disposition that is a gift or in part a sale or exchange and in part a gift;

(ii) A transaction described in section 1041(a); or

(iii) A disposition described in § 1.1254–2(c)(3) (relating to certain tax-free transactions).

(c) *Certain transfers at death.* If natural resource recapture property is acquired in a transfer at death, the amount of section 1254 costs with respect to the natural resource recapture property in the hands of the transferee immediately after the transfer includes the amount, if any, of the section 1254 costs deducted by the transferee before the decedent's death, to the extent that the basis of the natural resource recapture property (determined under section 1014(a)) is required to be reduced under the second sentence of section 1014(b)(9) (relating to adjustments to basis where the property

is acquired from a decedent prior to death).

(d) *Property received in a like kind exchange or involuntary conversion*—(1) *General rule.* If natural resource recapture property is disposed of in a like kind exchange under section 1031 or involuntary conversion under section 1033, then immediately after the disposition the amount of section 1254 costs with respect to any natural resource recapture property acquired for the property transferred is an amount equal to—

(i) The amount of section 1254 costs with respect to the natural resource recapture property disposed of; minus

(ii) The amount of any gain taken into account as ordinary income under section 1254(a)(1) by the transferor upon the disposition.

(2) *Allocation of section 1254 costs among multiple natural resource recapture properties acquired.* If more than one parcel of natural resource recapture property is acquired at the same time from the same person in a transaction referred to in paragraph (d)(1) of this section, the total amount of section 1254 costs with respect to the parcels is allocated to the parcels in proportion to their respective adjusted bases.

(e) *Property transferred in cases to which section 1071 or 1081(b) applies.* Rules similar to the rules of section 1245(b)(5) shall apply under section 1254.

**§ 1.1254–4 Special rules for S corporations and their shareholders. [Reserved].**

**§ 1.1254–5 Special rules for partnerships and their partners.**

(a) *In general.* This section provides rules for applying the provisions of section 1254 to partnerships and their partners upon the disposition of natural resource recapture property by the partnership and certain distributions of property by a partnership. See section 751 and the regulations thereunder for rules concerning the treatment of gain upon the transfer of a partnership interest.

(b) *Determination of gain treated as ordinary income under section 1254 upon the disposition of natural resource recapture property by a partnership*—(1) *General rule.* Upon a disposition of natural resource recapture property by a partnership, the amount treated as ordinary income under section 1254 is determined at the partner level. Each partner must recognize as ordinary income under section 1254 the lesser of—

(i) The partner's section 1254 costs with respect to the property disposed of; or

(ii) The partner's share of the amount, if any, by which the amount realized upon the sale, exchange, or involuntary conversion, or the fair market value of the property upon any other disposition, exceeds the adjusted basis of the property.

(2) *Exception to partner level recapture in the case of abusive allocations.* Paragraph (b)(1) of this section does not apply in determining the amount treated as ordinary income under section 1254 upon a disposition of section 1254 property by a partnership if the partnership has allocated the amount realized or gain recognized from the disposition with a principal purpose of avoiding the recognition of ordinary income under section 1254. In such case, the amount of gain on the disposition recaptured as ordinary income under section 1254 is determined at the partnership level.

(3) *Examples.* The provisions of paragraphs (a) and (b) of this section are illustrated by the following examples which assume that capital accounts are maintained in accordance with section 704(b) and the regulations thereunder:

*Example 1. Partner level recapture—In general.* A, B, and C, have equal interests in capital in Partnership ABC that was formed on January 1, 1985. The partnership acquired an undeveloped domestic oil property on January 1, 1985, for $120,000. The partnership allocated the property's basis to each partner in proportion to the partner's interest in partnership capital, so each partner was allocated $40,000 of basis. In 1985, the partnership incurred $60,000 of productive well intangible drilling and development costs with respect to the property. The partnership elected to deduct the intangible drilling and development costs as expenses under section 263(c). Each partner deducted $20,000 of the intangible drilling and development costs. Assume that depletion allowable under section 613A(c)(7)(D) for each partner for 1985 was $10,000. On January 1, 1986, the partnership sold the oil property to an unrelated third party for $210,000. Each partner's allocable share of the amount realized is $70,000. Each partner's basis in the oil property at the end of 1985 is $30,000 ($40,000 cost—$10,000 depletion deductions claimed). Each partner has a gain of $40,000 on the sale of the oil property ($70,000 amount realized—$30,000 adjusted basis in the oil property). Assume that each partner's depletion allowance would not have been increased if the intangible drilling and development costs had been capitalized. Each partner's section 1254 costs with respect to the property are $20,000. Thus, A, B, and C each must treat $20,000 of gain recognized as ordinary income under section 1254(a).

*Example 2. Special allocation of intangible drilling and development costs.* K and L form a partnership on January 1, 1997, to acquire and develop a geothermal property as defined under section 613(e)(2). The partnership agreement provides that all intangible drilling and development costs will be allocated to partner K, and that all other items of income, gain, or loss will be allocated equally between the two partners. Assume these allocations have substantial economic effect under section 704(b) and the regulations thereunder. The partnership acquires a lease covering undeveloped acreage located in the United States for $50,000. In 1997, the partnership incurs $50,000 of intangible drilling and development costs that are allocated to partner K. The partnership also has $30,000 of depletion deductions, which are allocated equally between K and L. On January 1, 1998, the partnership sells the geothermal property to an unrelated third party for $160,000 and recognizes a gain of $140,000 ($160,000 amount realized less $20,000 adjusted basis ($50,000 unadjusted basis less $30,000 depletion deductions)). This gain is allocated equally between K and L. Because K's section 1254 costs are $65,000 and L's section 1254 costs are $15,000, K recognizes $65,000 as ordinary income under section 1254(a) and L recognizes $15,000 as ordinary income under section 1254(a). The remaining $5,000 of gain allocated to K and $55,000 of gain allocated to L is characterized without regard to section 1254.

*Example 3. Section 59(e) election to capitalize intangible drilling and development costs.* Partnership DK has 50 equal partners. On January 1, 1995, the partnership purchases an undeveloped oil and gas property for $100,000. The partnership allocates the property's basis equally among the partners, so each partner is allocated $2,000 of basis. In January 1995, the partnership incurs $240,000 of intangible drilling and development costs with respect to the property. The partnership elects to deduct the intangible drilling and development costs as expenses under section 263(c). Each partner is allocated $4,800 of intangible drilling and development costs. One of the partners, H, elects under section 59(e) to capitalize his $4,800 share of intangible drilling and development costs. Therefore, H is permitted to amortize his $4,800 share of intangible drilling and development costs over 60 months. H takes a $960 amortization deduction in 1995. Each of the remaining 49 partners deducts his $4,800 share of intangible drilling and development costs in 1995. Assume that depletion allowable for each partner under section 613A(c)(7)(D) for 1995 is $1,000. On December 31, 1995, the partnership sells the property for $300,000. Each partner is allocated $6,000 of amount realized. Each partner that deducted the intangible drilling and development costs has a basis in the oil property at the end of 1995 of $1,000 ($2,000 cost − $1,000 depletion deductions claimed). Each of these partners has a gain of $5,000 on the sale of the oil property ($6,000 amount realized − $1,000 adjusted basis in the property). The section 1254 costs of each partner that deducted intangible drilling and development costs are $5,800 ($4,800 intangible drilling and development costs deducted + $1,000 depletion deductions claimed). Because each partner's section 1254 costs ($5,800) exceed each partner's share of amount realized less each

partner's adjusted basis ($5,000), each partner must treat his $5,000 gain recognized on the sale of the oil property as ordinary income under section 1254(a). Because H elected under section 59(e) to capitalize the $4,800 of intangible drilling and development costs and amortized only $960 of the costs in 1995, the $3,840 of unamortized intangible drilling and development costs are included in H's basis in the oil property. Therefore, at the end of 1995 H's basis in the oil property is $4,840 (($2,000 cost + $4,800 capitalized intangible drilling and development costs) − ($960 intangible drilling and development costs amortized + $1,000 depletion deduction claimed)). H's gain on the sale of the oil property is $1,160 ($6,000 amount realized − $4,840 adjusted basis). H's section 1254 costs are $1,960 ($960 intangible drilling and development costs amortized + $1,000 depletion deductions claimed). Because H's section 1254 costs ($1,960) exceed H's share of amount realized less H's adjusted basis ($1,160), H must treat the $1,160 of gain recognized as ordinary income under section 1254(a).

(c) *Section 1254 costs of a partner*—(1) *General rule.* A partner's section 1254 costs with respect to property held by a partnership include all of the partner's section 1254 costs with respect to the property in the hands of the partnership. In the case of property contributed to a partnership in a transaction described in section 721, a partner's section 1254 costs include all of the partner's section 1254 costs with respect to the property prior to contribution. Section 1.1254–1(b)(1)(iv), which provides rules concerning the treatment of suspended deductions, applies to amounts not deductible pursuant to section 704(d).

(2) *Section 1254 costs of a transferee partner after certain acquisitions*—(i) *Basis determined under section 1012.* If a person acquires an interest in a partnership that holds natural resource recapture property (transferee partner) and the transferee partner's basis for the interest is determined by reference to its cost (within the meaning of section 1012), the amount of the transferee partner's section 1254 costs with respect to the property held by the partnership is zero on the acquisition date.

(ii) *Basis determined by reason of the application of section 1014(a).* If a transferee partner acquires an interest in a partnership that holds natural resource recapture property from a decedent and the transferee partner's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the partnership interest on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date), the amount of the transferee partner's section 1254 costs with respect to property held by the partnership is zero on the acquisition date.

(iii) *Basis determined by reason of the application of section 1014(b)(9).* If an interest in a partnership that holds natural resource recapture property is acquired before the death of the decedent, the amount of the transferee partner's section 1254 costs with respect to property held by the partnership shall include the amount, if any, of the section 1254 costs deducted by the transferee partner before the decedent's death, to the extent that the basis of the partner's interest (determined under section 1014(a)) is required to be reduced under section 1014(b)(9) (relating to adjustments to basis when the property is acquired before the death of the decedent).

(iv) *Gifts and section 1041 transfers.* If an interest in a partnership is transferred in a transfer that is a gift, a part sale or exchange and part gift, or a transfer that is described in section 1041(a), the amount of the transferee partner's section 1254 costs with respect to property held by the partnership immediately after the transfer is an amount equal to—

(A) The amount of the transferor partner's section 1254 costs with respect to the property immediately before the transfer; minus

(B) The amount of any gain recognized as ordinary income under section 1254 by the transferor partner upon the transfer.

(d) *Property distributed to a partner*—(1) *In general.* The section 1254 costs for any natural resource recapture property received by a partner in a distribution with respect to part or all of an interest in a partnership include—

(i) The aggregate of the partners' section 1254 costs with respect to the natural resource recapture property immediately prior to the distribution; reduced by

(ii) The amount of any gain taken into account as ordinary income under section 751 by the partnership or the partners (as constituted after the distribution) on the distribution of the natural resource recapture property.

(2) *Aggregate of partners' section 1254 costs with respect to natural resource recapture property held by a partnership*—(i) *In general.* The aggregate of partners' section 1254 costs is equal to the sum of each partner's section 1254 costs. The partnership must determine each partner's section 1254 costs under either paragraph (d)(2)(i)(A) (written data) or paragraph (d)(2)(i)(B) (assumptions) of this section. The partnership may determine the section 1254 costs of some of the partners under paragraph (d)(2)(i)(A) of this section and of others under paragraph (d)(2)(i)(B) of this section.

(A) *Written data.* A partnership may determine a partner's section 1254 costs by using written data provided by a partner showing the partner's section 1254 costs with respect to natural resource recapture property held by the partnership unless the partnership knows or has reason to know that the written data is inaccurate. If a partnership does not receive written data upon which it may rely, the partnership must use the assumptions provided in paragraph (d)(2)(i)(B) of this section in determining a partner's section 1254 costs.

(B) *Assumptions.* A partnership that does not use written data pursuant to paragraph (d)(2)(i)(A) of this section to determine a partner's section 1254 costs must use the following assumptions to determine the partner's section 1254 costs:

(*1*) The partner deducted his or her share of deductions under section 263(c), 616, or 617 for the first year in which the partner could claim a deduction for such amounts, unless in the case of expenditures under section 263(c) or 616, the partnership elected to capitalize such amounts;

(*2*) The partner was not subject to the following limitations with respect to the partner's depletion allowance under section 611, except to the extent a limitation applied at the partnership level: the taxable income limitation of section 613(a); the depletable quantity limitations of section 613A(c); or the limitations of section 613A(d)(2), (3), and (4) (exclusion of retailers and refiners).

### § 1.1254–6 Effective date of regulations.

Sections 1.1254–1 through 1.1254–3 and § 1.1254–5 are effective with respect to any disposition of natural resource recapture property occurring after March 13, 1995. The rule in § 1.1254–1(b)(2)(iv)(A)(*2*), relating to a nonoperating mineral interest carved out of an operating mineral interest with respect to which an expenditure has been deducted, is effective with respect to any disposition occurring after March 13, 1995 of property (within the meaning of section 614) that is placed in service by the taxpayer after December 31, 1986.

### § 1.1502–14 [Amended]

**Par. 8.** In § 1.1502–14, the first sentence of paragraph (c)(1) is amended by removing the language ''or 1250(a)(1)'' and adding ''1250 (a)(1) or 1254(a)(1)'' in its place.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 9.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 10.** Section 602.101 (c) is amended by adding the following entries in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(c) * * *

| CFR part or section where identified and described | Current OMB control number |
|---|---|
| * * * * * | |
| 1.1254–1(c)(3) ..... | 1545–1352 |
| 1.1254–5(d)(2) ..... | 1545–1352 |
| * * * * * | |

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

Approved: November 22, 1994.

**Leslie B. Samuels,**

*Assistant Secretary of the Treasury.*

[FR Doc. 95–172 Filed 1–9–95; 8:45 am]

BILLING CODE 4830–01–U

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### 29 CFR Part 1425

### Mediation Assistance in the Federal Sector

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule is published in order to renew *Form F–53, Notice to Federal Mediation and Conciliation Service.*

Pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Federal Mediation and Conciliation Service submitted its final rule to the Office of Management and Budget (OMB) on November 2, 1994 and received its approval on November 23, 1994 for the use of F–53 through November 30, 1997.

**EFFECTIVE DATE:** February 9, 1995.

**FOR FURTHER INFORMATION CONTACT:** Eileen Hoffman, (202) 653–5305.

**SUPPLEMENTARY INFORMATION:** November 4, 1994, FMCS published a notice of proposed rulemaking in the **Federal Register** (59 FR 55268). This notice was published in order to extend FMCS Form F–53, which is used for notification of contract expirations or reopener in the Federal service, and to revise the text of 29 CFR 1425, which accompanies the illustration of Form F–53 in the agency's regulations (29 CFR 1425.2).

Form F–53 is made available to assist Federal agencies and labor organizations to obtain FMCS services, as provided for in the Title 5 U.S.C. Section 7119(a). The revision of Form F–53 allows parties to more clearly and accurately state the service requested and arranges information in a manner which aids in entry of data into FMCS computer records. The revised version of Form F–53 is shown below in this rule for purposes of identification.

A summary of information pertaining to Form F–53 is as follows:

*Form number:* FMCS F–53, OMB 3076–0005.

*Frequency:* On occasion.

*Respondent:* Parties to a Federal Sector dispute or grievance.

*Obligation:* Voluntary.

*Binder:* Approximately 600 responses per year; approximately 100 reporting hours per year; approximately 15 minutes per response.

*Need and Use:* The information is needed to advise FMCS of Federal Sector disputes pursuant to 29 CFR Part 1425 paragraph 1425.3. It is used in order to make assignments of cases to FMCS mediators.

*Comments:* No comments were received on the proposed form as it is no change from existing form.

### Executive Order 12291

This rule is not a ''major rule'' under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) a significant decline in productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

### Paperwork Reduction Act Notice

The collection of information in this rule was submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act [44 U.S.C. 3501 et seq.]. Comments regarding any aspect of this information collection should be submitted to the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, Attention: Eileen B. Hoffman, and the Office of Management and Budget, Attention: Desk Officer for FMCS, OMB room 3001, Washington, DC 20503.

### Regulatory Flexibility Act Certification

The FMCS finds that this rule will have no significant economic impact on a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 [5 U.S.C. 605(g)], and will so certify to the Chief Counsel for Advocacy of the Small Business Administration. This conclusion has been reached because the proposed rule does not, in itself, impose any additional economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

### List of Subjects in 29 CFR Part 1425

Administrative practice and procedure, collective bargaining, Labor-management relations.

Dated: December 14, 1994.

**John Calhoun Wells,**

*Director, FMCS.*

Accordingly, 29 CFR Part 1425 is amended as follows:

## PART 1425—MEDIATION ASSISTANCE IN THE FEDERAL SERVICE

1. The authority citation for 29 CFR Part 1425 is revised to read as follows:

**Authority:** 5 U.S.C. 581(8), 7119, 7134.

2. Section 1425.2 is revised to read as follows:

**§ 1425.2 Notice to the Service of agreement negotiations.**

(a) In order that the Service may provide assistance to the parties, the party initiating negotiations shall file a notice with the FMCS Notice Processing Unit, 2100 K Street, N.W., Washington, D.C. 20427, at least 30 days prior to the expiration or modification date of an existing agreement, or 30 days prior to the reopener date of an existing agreement. In the case of an initial agreement the notice shall be filed within 30 days after commencing negotiations.

(b) Parties engaging in mid-term or impact and/or implementation bargaining are encouraged to send a notice to FMCS if assistance is desired. Such notice may be sent by either party or may be submitted jointly. In regard to such notices a brief listing should be general in nature e.g., smoking policies, or Alternative Work Schedules (AWS).

(c) Parties requesting grievance mediation must send a request signed by both the union and the agency involved. Receipt of such request does